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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,705	02/06/2004	Manrique J. Brenes	CIS0209US	8310
33031	7590	09/11/2007		
CAMPBELL STEPHENSON LLP 11401 CENTURY OAKS TERRACE BLDG. H, SUITE 250 AUSTIN, TX 78758			EXAMINER BAKER, STEPHEN M	
			ART UNIT 2112	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/773,705

Applicant(s)

BRENES ET AL.

Examiner

Stephen M. Baker

Art Unit

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-21 and 23-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 10, 12-14, 17-19, 21, 23-26 and 29-31 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9, 15, 16, 20, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10, 12-21 and 23-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 12, 23 and 30, "estimating a ... link error rate ... using ... a hysteresis factor" is apparently incorrect, as a "hysteresis" is apparently only involved in determining an alarm state, not an error rate.

In claims 2 and 13, "determining ... link error rate ... in response to said detecting" is apparently based solely on the invention summary [0005] wherein it is stated that "operational link error rate is determined *in response to* the detection of an operational error using a cyclic redundancy check." The context provided in [0005] appears to imply that the phrase "rate is determined *in response to* the detection" could have been equivalently stated as "rate is determined *responsive to* the detection" merely meaning that the error rate is a rate of (error) detections. In view of a lack of detailed disclosure to the contrary, "in response to said detecting" is considered needlessly confusing and apparently should be "that is responsive to said detecting" or the like.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6-8, 10, 12-14, 17-19, 21, 23-26 and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,459,731 to Brief *et al* (hereafter "Brief").

Brief discloses arrangements for link error rate (LER) monitoring in an FDDI network and for setting and clearing an alarm responsive to changes in estimated LER. Brief's link error monitor (234) estimates LER by computing a time interval "T" in a formula (1) for LER as a weighted average time interval "AveInt" between link errors (column 3, lines 57+), where the link errors detected are line code violations (column 4, lines 22+). Brief's measured interval " $i_n$ " between each detected error serves as an "operational link error rate of a link" in the form of quantified seconds per error. Brief's LER estimate is used as a "real-time physical link error rate" in being applied to the ANSI FDDI PMD standard for maximum tolerable LER (column 3, lines 52-56). Accordingly Brief discloses a method comprising "determining an operational link error of a link" and "estimating a real-time physical link error rate of said link using said operational link error rate." Furthermore, Brief discloses "hysteresis" in the form of different LER thresholds for alarm setting and clearing, and Brief's different LER

thresholds for alarm setting and clearing inherently possess a “hysteresis factor” defined as “a ratio of a physical link alarm set threshold to a physical link alarm clear threshold.”

Regarding claims 3, 14 and 26, Brief’s error rate monitoring is performed on data transmitted between “elements” of a network and apparently operates “at least partially concurrently” with the data reception, as data reception is apparently not interrupted for such monitoring.

Regarding claims 7 and 18, FDDI data is understood to be comprise a “plurality of data sets” within which the errors are detected.

Regarding claims 8, 10, 19, 21, 23, 24 and 29, in addition to generating an alarm responsive to an “alarm set threshold”, i.e. generating “an alarm signal in response to a comparison of said real-time physical link error rate and a physical link error alarm set threshold,” Brief also discloses a pass threshold that serves as an “alarm clear threshold” (column 5, lines 8-56). Brief’s configuration registers (Table 1) supports a “configuration subsystem to receive data specifying said physical link error alarm set threshold.”

Regarding claims 12-14, 17-19 and 21, software code for supporting the functions described above is provided in Brief’s appendix.

#### ***Allowable Subject Matter***

5. Claims 4, 5, 9, 15, 16, 20, 27 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claim 32 is allowed.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Baker whose telephone number is (571) 272-3814. The examiner can normally be reached on Monday-Friday (11:00 AM - 7:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques H. Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/773,705

Page 6

Art Unit: 2112



Stephen M. Baker  
Primary Examiner  
Art Unit 2112

smb